

SUPPORTING STATEMENT

1125-0001 Application for Cancellation of Removal: Form EOIR-42A (Application for Cancellation of Removal for Certain Permanent Residents) and Form EOIR-42B (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents)

Part A. Justification

1. Necessity of Information - Effective April 1, 1997, an individual who is removable from the United States may, pursuant to section 240A of the Immigration and Nationality Act (Act), request that the Attorney General cancel his/her removal. To be granted such relief from removal, the applicant must prove that he/she meets all the statutory prerequisites for such relief and that he/she is entitled to a favorable exercise of discretion. There are two application forms available for cancellation of removal: Form EOIR-42A, for Certain Permanent Residents; and Form EOIR-42B, Adjustment of Status for Certain Nonpermanent Residents. In turn, Form EOIR-42B permits application for two separate forms of relief: (1) cancellation of removal for nonpermanent residents; and (2) a form of relief called Special Rule for Battered Spouse or Child (“special rule cancellation”) developed under the Violence Against Women Act.

Each applicant for cancellation of removal will file one application based on the individual facts and circumstances in his/her case. The form contains information, such as identifying characteristics, residence and employment history, and family information, which is necessary for the Attorney General to decide whether to permit the applicant to remain in the United States. EOIR has made several

substantive changes to the forms. On both forms, EOIR has added a new question asking applicants to provide their education history. This is a question is relevant to the adjudication of a cancellation application and is similarly asked of applicants seeking to adjust their status to a permanent resident on the Form I-485 (OMB #1615-0023) maintained by the Department of Homeland Security, United States Immigration Services. Individuals eligible to adjust status before an immigration judge may renew their request for adjudication of the I-485 before an immigration judge. A grant of adjustment of status pursuant to an I-485 application results in the same outcome as a grant of cancellation of removal pursuant to an EOIR-42A/B – adjustment of status to a lawful permanent resident of the United States.

EOIR has also removed the check box options under Question 17 on the EOIR-42B, asking the applicant to indicate whether any of their “qualifying relatives” (a spouse, parent or child) has temporary status or no status in the United States. In order to be a “qualifying relative” for the purpose of cancellation of removal for nonpermanent residents, the relative must be a United States citizen or a lawful permanent resident. As such, the collection of information about relatives who either have temporary status or no status was not relevant to the question concerning “qualifying relatives”.

EOIR has also added applicants to indicate the category on their lawful permanent resident card to Question 21 on both forms, where the applicant indicates that they

entered using a lawful permanent resident card. All other changes were non-substantive (see attached forms with formatting changes highlighted and written narrative of changes).

2. Needs and Uses - The application for cancellation of removal (Form EOIR-42A or Form EOIR-42B) is filed and considered in the context of an immigration proceeding. Accordingly, information contained in the application is considered only to the extent necessary to process the application. The application is accepted into the official record of the immigration proceeding and is considered by an Immigration Judge or, if the case is on appeal, the Board of Immigration Appeals, in determining whether to grant or deny the applicant's request for cancellation of removal. The authority to adjudicate the application for cancellation of removal has been delegated to EOIR by the Attorney General.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-42A and Form EOIR-42B are available on EOIR's website for printing. An applicant can either type the requested information into the online form and then print the completed form for submission to the agency, or print the blank form in its entirety and complete it by typing or printing legibly.

Currently, EOIR does not have the capability to accept electronic submission of either Form EOIR-42A or EOIR-42B. However, EOIR has developed an

eRegistry, which is part of a long-term agency initiative to create an electronic case access and filing system for the Immigration Court and the Board of Immigration Appeals. eRegistry allows attorneys and accredited representatives with full accreditation to create and maintain a personal profile in order to electronically submit forms and update existing forms. Electronic submission of the Forms EOIR-42A and EOIR-42B through eRegistry are part of EOIR's long-term electronic filing initiative.

4. Efforts to Identify Duplication - The only method for applying for cancellation of removal in immigration proceedings is for an alien to file the Form EOIR-42A or Form EOIR-42B, as applicable. A review of EOIR's forms revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities.

6. Consequences of Less Frequent Collection - Failure to collect this information would deprive the individual of establishing his or her eligibility for cancellation of removal.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection.

The Immigration Judge presiding over the applicant's immigration proceedings has the discretion to set the period of time the applicant is given to respond to this collection. However, an applicant may request from the Immigration Judge an extension of time in which to file the collection and may appeal the decision of the Immigration Judge to the Board of Immigration Appeals.

8. Federal Register Publication and Consultation - A 60-day notice covering this collection has been published in the Federal Register. *See* 84 FR 17891 (Apr. 26, 2019). A 30-day notice covering this collection will be published in the Federal Register. Copies of these notices are attached. If comments are received, they will be considered and incorporated where appropriate.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to parties in immigration proceedings.

10. Assurance of Confidentiality - The original application is maintained by the EOIR in the official court record of proceeding (ROP) and is accessed by staff members processing the ROP. The confidentiality of the contents of the Form EOIR-42A and Form EOIR-42B is protected by EOIR, as are all the documents in the ROP, to the extent permitted by the law, including the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - Any question that seeks sensitive information is necessary for the Immigration Judge to consider an applicant's statutory and discretionary eligibility for cancellation of removal and to determine his/her legal right to remain in the United States. See number 10 immediately above.

12. Estimate of Hour Burden

a. Number of Respondents	27,999
b. Number of Responses per Respondent	1 each
c. Total Annual responses	27,999
d. Hours per response	5 hours, 50 minutes
e. Total annual hourly reporting burden	162,394

The total annual reporting burden is derived by multiplying the number of respondents (27,999) by the frequency of response (1) by the number of hours per response (5 hours, 50 minutes or 5.8):

27,999 respondents x 1 response per respondent x 5.8 hours per respondent =
162,394 burden hours.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection. The estimated total public cost is a maximum of \$12,239.863. This estimate is derived by multiplying the burden hours of 162,394 by the estimated practitioner cost of \$58.13/hr., plus a filing fee of \$100 per respondent.

162,394 burden hours x \$58.13/hr. (estimated practitioner cost) = \$9,439,963.

\$100 filing fee x 27,999 respondents = \$2,799,900.

\$9,439,369 + \$2,799,900 = \$12,239.863.

The total amount listed above (\$12,239.863) represents the maximum estimated cost burden to the public. The practitioner fee represents the median hourly wage for lawyers, as reported by the Bureau of Labor Statistics.

The actual costs may vary depending on a number of factors. For example, some applicants for cancellation of removal will not retain a practitioner to assist them in filling out the form and, therefore, will not incur practitioner fees. For such individuals, there is an estimated cost of \$10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. EOIR has not included this amount as it is less than the estimated practitioner cost and would not add to the maximum estimate of \$12,239.863. Additionally, applicants may seek to have the \$100 filing fee waived by requesting a waiver from an Immigration Judge or submitting Form E-26A.

14. Estimated Cost to the Federal Government - EOIR estimates that the annual government cost for printing, distributing, stocking, processing and maintaining the Forms EOIR-42A and EOIR-42B is \$265,181. This amount includes printing costs of \$36,398, which was derived by multiplying the 13 pages of the Form EOIR-42B¹ by an estimated \$.10 per copy by the estimated 27,999 respondents

¹ The Form EOIR-42A has 12 pages. EOIR based its calculations on the 13 pages of the EOIR-42B to generate a maximum estimated cost.

per year. This amount also includes stocking, processing and maintenance costs of \$228,783, which was derived by calculating the personnel and overhead costs to EOIR for processing the form.

15. Reasons for Change in Burden - The difference in burden is due to an agency adjustment, specifically an increase in the number of respondents. Previously, EOIR estimated 25,654 respondents annually. At present, there are approximately 27,999 respondents annually. As the number of hours per response remained the same (5 hours and 50 minutes), the total burden hours increased from 148,793 to 162,394 burden hours, for a difference of 13,601 burden hours. Because of the lower number of respondents, the cost burden similarly decreased.

16. Plans for Publication - EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. Exceptions to the Certification Statement- EOIR does not request an exception to the certification of this information collection.

Section B. Collection of Information Employing Statistical Methods

This collection does not employ statistical methods.

PAPERWORK CERTIFICATION

In submitting this request for Office of Management and Budget (OMB) approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. § 1320.

Christina Baptista
Senior Counsel for Immigration
Executive Office for Immigration Review

June 26 2019
Date